APPEAL NO. 93474

On April 29, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. The issue determined at the contested case hearing was whether the claimant, CH, who is the respondent in this appeal, sustained an injury on (date of injury), in the course and scope of her employment with (employer). The hearing officer determined that the claimant had sustained an injury to her shoulder on September 3, 4, and 5, 1992, and repetitive trauma to her left and right hands, wrists, and forearms on (date of injury). The hearing officer ordered that benefits be paid in accordance with his decision.

The carrier has appealed, arguing that the evidence was insufficient to prove that claimant's carpel tunnel syndrome occurred within the course and scope of employment. The carrier argues that there is not sufficient medical evidence to prove this. No response has been filed by the claimant.

DECISION

After reviewing the record, we affirm the hearing officer's decision.

The claimant worked for about a year and five months for the employer before she left work on (date of injury). She stated that she was a part-time worker, which meant from 30-35 hours per week generally. Her duties involved gathering and recording interview answer data on questionnaires, either by recording responses on a CRT keyboard, or writing the answers on paper. She stated that she would solicit interviews either by telephoning the prospective interviewee, or by intercepting persons at shopping malls. When phone contact was made, answers to questions would be entered typically as one-character responses by using her right hand on a keypad. However, some surveys contained open-ended questions which would require typing in the text of answers given.

On Thursday, Friday, and Saturday, September 3-5, 1992, claimant did interviews in malls. She stated that she worked about 13 hours per day on this job, and carried a 20 pound bag of materials from entrance to entrance as she moved interview stations throughout the day. Claimant said she volunteered, through her place of employment, to work for the muscular dystrophy telethon over Labor Day weekend. This involved just answering the telephone, and she stated she did not handle that many calls. She returned to work on (date of injury), working the whole day doing telephone interviews and CRT responses. Claimant stated that that night at home, her right shoulder was so painful that she could not sit back against her sofa. Claimant stated that she went in to work the following day, but after working 2-1/2 to three hours was unable to work any more due to pain in her right arm. She asked her supervisor, PM, for permission to leave to see the doctor, and thereafter went to see (Dr. G).

Claimant stated that Dr. G told her she had strained her shoulder (his medical report documents cervical and shoulder strain), but that he also suspected she had carpal tunnel syndrome, and recommended further testing. The claimant said that Dr. G suggested that the injury was work related and that she should file a claim for workers' compensation. A

note from Dr. G in the record states that claimant has a common occupational injury for data entry personnel. The claimant said that further testing, through an EMG, by (Dr. K) indicated that claimant had moderate carpal tunnel syndrome in her right hand, and mild carpal tunnel in her left hand.[1] The claimant said she had experienced pains and burning sensations in her wrists and along the back of her arm around her elbow before, usually after CRT work, but that it did not interfere with her ability to work. Claimant stated that the CRT terminal did not have any wrist supports and the keyboard was right on the edge of the tabletop. With regard to her pain episodes, she acknowledged that she "blew it off" and did not report this to people at work, but also indicated that she did not, at the time, make the connection to her work.

Claimant stated she went to another doctor, (Dr. F), because Dr. G was simply giving her drugs for her problem. Claimant stated that although Dr. F cautioned that her condition could require surgery in the future, he gave her a full release to work November 5, 1992. Claimant stated she is ready and able to work.

Claimant's supervisor, (Ms. M), testified that claimant reported right shoulder pain on September 9th, after working about 1 to 1-1/2 hours. Ms. M stated that she had never reported pain before.

(Mr. P), the company president, stated that he strongly disputed claimant's claim because he felt it was an exploitation of the system. He stated that he did not blame claimant, whom he characterized as a good worker, but her doctor, for the suggestion that her condition could be work related. He stated that he felt it was not work related because claimant first had the symptoms at home. Mr. P also based his conclusion on the fact that for most of two months prior to September 9th, claimant had not worked at the terminal, but had done mall interviews or office interviews involving writing the answers down. He stated that for the day and a half prior to leaving work, she worked on the terminal but the survey in question involved perhaps 50 single character answer keystrokes per 20-30 minute interview. Mr. P said that he reviewed claimant's records since December 1991; these showed that claimant worked 913 hours, and 404 of those hours were on the CRT terminal. He stated that the telephone used by workers was about 12 inches away from them at the most. Mr. P stated that his business' experience rating had a great effect on the amount that would be paid for workers' compensation insurance. As far as he could recall, this was the first claim of this nature. Mr. P pointed out that there were many other workers who used the CRT more than claimant.

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[1] A copy of the EMG test report was not admitted because it had not been exchanged. However, whether there was good cause for failure to exchange may not have been sufficiently developed; the claimant was assisted by an ombudsman, to whom she turned over documents for exchange. Five days before the hearing, a new ombudsman was brought in to assist her. Claimant stated she got a copy from Dr. G, but no one asked her when this occurred. As there has been no complaint on appeal about this ruling, however, we make no determination on the matter.

There is sufficient evidence to support that claimant sustained injuries found by the hearing officer. The claimant has the burden of proving that a repetitive trauma injury has claimant's testimony alone is sufficient to establish that an injury has occurred. Gee v. Liberty Mutual Fire Insurance Co., 765 S.W.2d 394 (Tex. 1989). The hearing officer is the sole judge of the relevance, the materiality, weight, and credibility of the evidence presented at the hearing. Article 8308-6.34(e). The decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Co. of Newark, N.J., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). Here, not only is there the testimony of the claimant, there is corroboration of the shoulder injury by Dr. G, as well as the work-relatedness of the carpal tunnel syndrome. The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Co. v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). The decision of the hearing officer that claimant sustained injury is sufficiently supported by the evidence and is affirmed.

Susan M. Kelley
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Joe Sebesta
Appeals Judge